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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,281	06/24/2003	William Ian Young	006-349-300	1719

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EXAMINER

UPTON, CHRISTOPHER

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,281

Applicant(s)

YOUNG ET AL.

Examiner

Christopher Upton

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-8, 10-17 and 19-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28 is/are allowed.
- 6) ☒ Claim(s) 2, 3, 5-8, 10-12, 14-17, 19, 21, 24 and 25 is/are rejected.
- 7) ☒ Claim(s) 4, 13, 20, 22, 23, 26 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1724

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2, 3, 5-8, 10-12, 14-17, 19, 21, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kallenbach et al in view of Hater.

Kallenbach discloses a foamed polymeric carrier for microorganisms, which may be floating (see column 4, lines 11-14). Kallenbach does not disclose that the device may be used to remediate hydrocarbons with hydrocarbon digesting microorganisms. It is known to use a carrier for microorganisms to treat hydrocarbons, as exemplified by Hater. It would therefore have been obvious for one skilled in the art to adapt the device of Kallenbach to treat hydrocarbons, in view of the general disclosure by Kallenbach that the device may be used in a wide variety of applications, including water treatment and bioremediation (see column 5, line 66 - column 6, line 4). With respect to claims 3, 5-8, 12, 14-17 and 21, it is submitted that the specific form and type of microorganism would have been an obvious matter of choice for one skilled in the art, due to the disclosure by Kallenbach that a wide variety of microorganisms may be used depending on the treatment desired, and therefore fails to patentably distinguish over Kallenbach. Note that Kallenbach discloses that a clay may be used as the treating material (see column 4, lines 55-60).

3. Claims 4, 13, 20, 22, 23, 26 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 28 is allowed.

The recitation of a system and method for removing hydrocarbons from a body of water comprising a floater containing microbes, wherein the floater is formed of porous polymeric foam and the microorganisms are inserted into an opening in the floater, are located throughout the floater or are mixed into the foam prior to foaming patentably distinguishes over the prior art of record.

4. Applicant's arguments filed on February 21, 2006 have been fully considered but they are not persuasive.

Applicant argues that the Kallenbach patent teaches away from locating the microorganisms within the core of the foam. It is submitted that the claims, except for claim 26 do not require that the microbes be located throughout the floater, and therefore in the core area as well as the outer region of the floater. It is submitted that the recitation of "within the floater" or "into the floater," as found in the instant claims does not specify the core, or any specific part of the floater. Therefore, the claims read in the microbes found within the surface and outer region of the foam of Kallenbach.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Upton whose telephone number is 571-272-1169. The examiner can normally be reached on 7:30-5:00, off every other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to be 'CU' with a stylized flourish.

Christopher Upton
Primary Examiner
Art Unit 1724